

LFC Requester:

Marty Daly

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ☐ **Amendment** ☐
Correction ☐ **Substitute** ☒

Date February 15, 2016

Bill No: HB 50

Sponsor: Representative Conrad James

Agency Code: 305

Short Termination of Rights

Person Writing Jennifer Salazar, AAG

Title: For Certain Parents

Phone: 827-6990

Email jsalazar@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

The House Floor Substitute to House Bill 50 enacts a new section to the New Mexico Children's Code.

Paragraph A allows a parent to petition the court to terminate the parental rights of the child's other parent where the other parent has been convicted of criminal sexual penetration and where the criminal sexual penetration resulted in the child's birth.

With respect to a child subject to the federal Indian Child Welfare Act of 1978 ("ICWA"), paragraph B of the Substitute requires that an attempted termination be proven beyond a reasonable doubt.

The term "criminal sexual penetration" is defined in paragraph C as "criminal sexual penetration in the first, second, or third degree pursuant to the laws of this state or an equivalent offense pursuant to the laws of another jurisdiction, territory or possession of the United States or an Indian nation, tribe, or pueblo.

Section 2 makes July 1, 2016, the effective date of the act.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The United States Supreme Court has held that due process requires a state to require proof, by clear and convincing evidence, in proceedings concerning the termination of parental rights. See Santosky v. Kramer, 455 U.S. 745, 102 S. Ct. 1388 (1982). As currently drafted, it is unclear if a parent's conviction of criminal sexual penetration alone would meet this burden of proof.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

There seem to be a few words missing on page 2, line 7. Also, it is unclear what is meant by “in 25 that Act.” See page 2, line 7.

OTHER SUBSTANTIVE ISSUES

In paragraph A, it is not clear which court (i.e. venue) a parent may petition for termination of the other parent’s parental rights.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A